able to control the debtor. Accordingly, the Board does not regard the presumption of section 2(g)(3) as applicable to the following categories of credit, provided the extensions of credit are not secured by the transferred property and are made in the ordinary course of business of the transferor (or its subsidiary) that is regularly engaged in the business of extending credit:

(i) Consumer credit extended for personal or household use to an individual transferee; (ii) student loans made for the education of the individual transferee or a spouse or child of the transferee; (iii) a home mortgage loan made to an individual transferee for the purchase of a residence for the individual's personal use and secured by the residence; and (iv) loans made to companies (as defined in section 2(b) of the Act) in an aggregate amount not exceeding ten per cent of the total purchase price (or if not sold, the fair market value) of the transferred property. The amounts and terms of the preceding categories of credit should not differ substantially from similar credit extended in comparable circumstances to others who are not transferees. It should be understood that, while the statutory presumption in situations involving these categories of credit may not apply, the Board is not precluded in any case from examining the facts of a particular transfer and finding that the divestiture of control was ineffective based on the facts of record.

(d) Section 2(g)(3) provides that a Board determination that a transferor is not in fact capable of controlling a transferee shall be made after opportunity for hearing. It has been the Board's routine practice since 1966 to publish notice in the FEDERAL REGISTER of applications filed under section 2(g)(3) and to offer interested parties an opportunity for a hearing. Virtually without exception no comments have been submitted on such applications by parties other than the applicant and, with the exception of one case in which the request was later withdrawn, no hearings have been requested in such cases. Because the Board believes that the hearing provision in section 2(g)(3) was intended as a protection for applicants who are seeking to have the presumption overcome by a Board order, a hearing would not be of use where an application is to be granted. In light of the experience indicating that the publication of FEDERAL REGISTER notice of such applications has not served a useful purpose, the Board has decided to alter its procedures in such cases. In the future, FEDERAL REGISTER notice of section 2(g)(3) applications will be published only in cases in which the Board's General Counsel, acting under delegated authority, has determined not to grant such an application and has referred the matter to the Board for decision.[6]

(12 U.S.C. 1841, 1844)

[43 FR 6214, Feb. 14, 1978; 43 FR 15147, Apr. 11, 1978; 43 FR 15321, Apr. 12, 1978, as amended at 45 FR 8280, Feb. 7, 1980; 45 FR 11125, Feb. 20, 1980]

§ 225.140 Disposition of property acquired in satisfaction of debts previously contracted.

(a) The Board recently considered the permissibility, under section 4 of the Bank Holding Company Act, of a subsidiary of a bank holding company acquiring and holding assets acquired in satisfaction of a debt previously contracted in good faith (a ''dpc'' acquisition). In the situation presented, a lending subsidiary of a bank holding company made a ''dpc'' acquisition of assets and transferred them to a wholly-owned subsidiary of the bank holding company for the purpose of effecting an orderly divestiture. The question presented was whether such ''dpc'' assets could be held indefinitely by a bank holding company subsidiary as incidental to its permissible lending activity.

(b) While the Board believes that ''dpc'' acquisitions may be regarded as normal, necessary and incidental to

[6] It should be noted that in the event a third party should take exception to a Board order under section 2(g)(3) finding that control has been terminated, any rights such party might have would not be prejudiced by the order. If such party brought facts to the Board's attention indicating that control had not been terminated the Board would have ample authority to revoke its order and take necessary remedial action.

Orders issued under section 2(g)(3) are published in the Federal Reserve ''Bulletin.''

the business of lending, the Board does not believe that the holding of assets acquired ''dpc'' without any time restrictions is appropriate from the standpoint of prudent banking and in light of the prohibitions in section 4 of the Act against engaging in nonbank activities. If a nonbanking subsidiary of a bank holding company were permitted, either directly or through a subsidiary, to hold ''dpc'' assets of substantial amount over an extended period of time, the holding of such property could result in an unsafe or unsound banking practice or in the holding company engaging in an impermissible activity in connection with the assets, rather than liquidating them.

(c) The Board notes that section 4(c)(2) of the Bank Holding Company Act provides an exemption from the prohibitions of section 4 of the Act for bank holding company subsidiaries to acquire *shares* ''dpc''. It also provides that such ''dpc'' shares may be held for a period of two years, subject to the Board's authority to grant three one-year extensions up to a maximum of five years.[1] Viewed in light of the Congressional policy evidenced by section 4(c)(2), the Board believes that a lending subsidiary of a bank holding company or the holding company itself, should be permitted, as an incident to permissible lending activities, to make acquisitions of ''dpc'' *assets.* Consistent with the principles underlying the provisions of section 4(c)(2) of the Act and as a matter of prudent banking practice, such assets may be held for no longer than five years from the date of acquisition. Within the divestiture period it is expected that the company will make good faith efforts to dispose of ''dpc'' shares or assets at the earliest practicable date. While no specific authorization is necessary to hold such assets for the five-year period, after two years from the date of acquisition of such assets, the holding company should report annually on its efforts to accomplish divestiture to its Reserve Bank. The Reserve Bank will monitor the efforts of the company to effect an orderly divestiture, and may order divestiture before the end of the five-year period if supervisory concerns warrant such action.

(d) The Board recognizes that there are instances where a company may encounter particular difficulty in attempting to effect an orderly divestiture of ''dpc'' real estate holdings within the divestiture period, notwithstanding its persistent good faith efforts to dispose of such property. In the Depository Institutions Deregulation and Monetary Control Act of 1980, (Pub. L. 96–221) Congress, recognizing that real estate possesses unusual characteristics, amended the National Banking Act to permit national banks to hold real estate for five years and for an additional five-year period subject to certain conditions. Consistent with the policy underlying the recent Congressional enactment, and as a matter of supervisory policy, a bank holding company may be permitted to hold real estate acquired ''dpc'' beyond the initial five-year period provided that the value of the real estate on the books of the company has been written down to fair market value, the carrying costs are not significant in relation to the overall financial position of the company, and the company has made good faith efforts to effect divestiture. Companies holding real estate for this extended period are expected to make active efforts to dispose of it, and should keep the Reserve Bank advised on a regular basis concerning their ongoing efforts. Fair market value should be derived from appraisals, comparable sales or some other reasonable method. In any case, ''dpc'' real estate would not be permitted to be held beyond 10 years from the date of its acquisition.

(e) With respect to the transfer by a subsidiary of other ''dpc'' shares or assets to another company in the holding company system, including a section 4(c)(1)(D) liquidating subsidiary, or to the holding company itself, such transfers would not alter the original divestiture period applicable to such shares or assets at the time of their acquisition. Moreover, to ensure that assets are not carried at inflated values for extended periods of time, the Board expects, in the case of all such

[1] The Board notes that where the dpc shares or other similar interests represent less than 5 percent of the total of such interests outstanding, they may be retained on the basis of section 4(c)(6), even if originally acquired dpc.

intracompany transfers, that the shares or assets will be transferred at a value no greater than the fair market value at the time of transfer and that the transfer will be made in a normal arms-length transaction.

(f) With regard to ''dpc'' assets acquired by a banking subsidiary of a holding company, so long as the assets continue to be held by the bank itself, the Board will regard them as being solely within the regulatory authority of the primary supervisor of the bank.

(12 U.S.C. 1843 (c)(1)(d), (c)(2), (c)(8), and 1844 (b); 12 U.S.C. 1818)

[45 FR 49905, July 28, 1980]

§ 225.141 Operations subsidiaries of a bank holding company.

In orders approving the retention by a bank holding company of a 4(c)(8) subsidiary, the Board has stated that it would permit, without any specific regulatory approval, the formation of a wholly owned subsidiary of an approved 4(c)(8) company to engage in activities that such a company could itself engage in directly through a division or department. (*Northwestern Financial Corporation*, 65 Federal Reserve Bulletin 566 (1979).) Section 4(a)(2) of the Act provides generally that a bank holding company may engage directly in the business of managing and controlling banks and permissible nonbank activities, and in furnishing services directly to its subsidiaries. Even though section 4 of the Act generally prohibits the acquisition of shares of nonbanking organizations, the Board does not believe that such prohibition should apply to the formation by a holding company of a wholly-owned subsidiary to engage in activities that it could engage in directly. Accordingly, as a general matter, the Board will permit without any regulatory approval a bank holding company to form a wholly-owned subsidiary to perform servicing activities for subsidiaries that the holding company itself could perform directly or through a department or a division under section 4(a)(2) of the Act. The Board believes that permitting this type of subsidiary is not inconsistent with the nonbanking prohibitions of section 4 of the Act, and is consistent with the authority in section 4(c)(1)(C) of the Act, which permits a bank holding company, without regulatory approval, to form a subsidiary to perform services for its *banking* subsidiaries. The Board notes, however, that a servicing subsidiary established by a bank holding company in reliance on this interpretation will be an affiliate of the subsidiary bank of the holding company for the purposes of the lending restrictions of section 23A of the Federal Reserve Act. (12 U.S.C. 371c)

(12 U.S.C. 1843(a)(2) and 1844(b))

[45 FR 54326, July 15, 1980]

§ 225.142 Statement of policy concerning bank holding companies engaging in futures, forward and options contracts on U.S. Government and agency securities and money market instruments.

(a) *Purpose of financial contract positions.* In supervising the activities of bank holding companies, the Board has adopted and continues to follow the principle that bank holding companies should serve as a source of strength for their subsidiary banks. Accordingly, the Board believes that any positions that bank holding companies or their nonbank subsidiaries take in financial contracts should reduce risk exposure, that is, not be speculative.

(b) *Establishment of prudent written policies, appropriate limitations and internal controls and audit programs.* If the parent organization or nonbank subsidiary is taking or intends to take positions in financial contracts, that company's board of directors should approve prudent written policies and establish appropriate limitations to insure that financial contract activities are performed in a safe and sound manner with levels of activity reasonably related to the organization's business needs and capacity to fulfill obligations. In addition, internal controls and internal audit programs to monitor such activity should be established. The board of directors, a duly authorized committee thereof or the internal auditors should review periodically (at least monthly) all financial contract positions to insure conformity with such policies and limits. In order to determine the company's exposure, all open positions should be